

REMARKS

In the outstanding official action, the Examiner asserted that the present application contains claims directed to two distinct inventions and accordingly required restriction under 35 USC 121. In particular, the Examiner identified the following inventions:

Group I. Claims 35-43, which are drawn to a viewing control apparatus and method, and which are classified in class 380, subclass 202; and

Group II. Claims 44-51, which are drawn to a distribution system specific to usage determination, and which are classified in class 705, subclass 52.

The Examiner determined that the inventions defined by the above two noted groups are related as subcombinations usable together in a single combination.

By the present response, and as noted above, Applicant has elected, for examination on the merits in the present application, the invention categorized by the Examiner as comprising group I and to which claims 35-43 are directed. Such election is made with traverse for the reasons as will be set forth more fully hereinbelow.

Initially, Applicant respectfully submits that the Examiner's characterization of the assertedly distinct inventions as "related as subcombinations disclosed as usable together in a single combination" is incorrect. In particular, Applicant respectfully submits (without in any manner agreeing with the Examiner's characterization of the inventions as being distinct) that a more accurate characterization would be that they are related as combination/subcombination. In this regard, the Examiner is respectfully requested to compare the recitations of claims 35 and 44. In particular, substantially all of the recitations of the viewing control apparatus, which is the subject matter of claim 35, are contained in claim 44.

Accordingly, at least for this reason, the Examiner's basis for the conclusion of distinctness is in error. Applicant additionally notes that to evidence distinctness between claims that are related as combination/subcombinations different and additional criteria must be satisfied. Since the Examiner has not even addressed such criteria, for this additional reason the Examiner's restriction requirement is submitted to be inappropriate and should be withdrawn.

Independently of the above, the Examiner's comments regarding the existence of a serious burden are submitted to be inappropriate and inadequate. In particular, in paragraph 6 (page 3) of the outstanding official action, the Examiner asserted the existence of a serious search and examination burden if restriction were not required because one or more of "the following reasons" apply.

However, the Examiner did not indicate, with any degree of specificity, that any of the five enumerated reasons apply to the claims pending in the present application. Nor did the Examiner provide any evidence as to whether or why any of the five listed reasons apply to the particular claims pending in the present application.

Applicant respectfully submits that merely reproducing a list of reasons, which, if true and if supported by appropriate evidence with respect to the particular claims in the present application, supports the propriety of a restriction requirement, is, in and of itself, inadequate and insufficient to support a conclusion that a serious search and examination burden actually exists. Accordingly, it is clear that the Examiner has in fact provided no evidence of the existence of a serious search and examination burden in the present application and that for this reason alone, the Examiner's restriction requirement is submitted to be inappropriate and improper.

Yet additionally, Applicant respectfully submits that in the present situation, restriction is inappropriate due to the close relationship between the claims of the two groups identified by the

Examiner, as can be seen by comparing the recitations thereof.

Accordingly, for each of the above noted reasons and certainly for all of the above noted reasons taken in combination, Applicant respectfully request reconsideration and withdrawal of the outstanding restriction requirement, together with an action on the merits of all of claims 35-51 pending in the present application. Such action is now believed to be appropriate and proper and is thus respectfully requested, in due course.

Of course, as noted above, should the Examiner decide not to reconsider and withdraw the outstanding restriction requirement, Applicant has elected, group I, comprising claims 35-43 for examination on the merits in the present application.

SUMMARY AND CONCLUSION

Applicant has made a sincere effort to respond to the Examiner's outstanding restriction requirement and believes that he has now done so. Applicant has elected, with traverse, one of the two groups of claims identified by the Examiner. Applicant has additionally traversed the propriety of the asserted restriction requirement on a number of grounds, and has provided clear and convincing evidence supporting such traverse. Accordingly, Applicant respectfully requests, reconsideration and withdrawal of the outstanding restriction requirement, together with an action on the merits of all the claims pending in the present application, in due course.

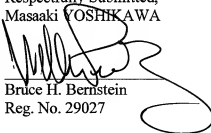
If any extension of time is necessary, this is an express request for any necessary extension of time and an authorization to charge any required extension of time fee or any other fees which may be required to preserve the pendency of the present obligation to Deposit Account No. 19-0089.

Should the Examiner have any questions or comments regarding this paper, the Examiner is respectfully invited to contact the undersigned at the below-listed telephone number.

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Respectfully Submitted,
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